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FISCAL IMPACT REPORT

ORIGINAL DATE
LAST UPDATED _____

SPONSOR Rehm HB 478

SHORT TITLE Chemical Tests & Controlled Substances SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(Unknown)	Unknown)		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Corrections Department (CD)
 Department of Health (DOH)
 Department of Transportation (DOT)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 478 amends the DWI statute, NMSA 1978, Section 66-8-102. At present, it is unlawful to drive a vehicle with a blood alcohol concentration (BAC) of .08 or more. HB 478 makes it unlawful to drive with a .08 BAC as proved by a test given within three hours of driving the vehicle where the BAC results from alcohol consumed before or while driving the vehicle.

In addition, HB 478 amends Section 66-8-102 by adding provisions making it unlawful to drive while under the influence of a controlled substance, coca and its derivatives, and methamphetamine.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

DOH believes the clarification in this bill will be to allow existing FTEs at the Scientific Laboratory (SLD) to complete their required workload of drug testing within acceptable times to meet the needs of law enforcement agencies and the Office of the Medical Investigator. In recent years, the growing demand for expert witness testimony in DWI cases has diverted manpower from performing lab analyses and cause delays in results which have adversely affected DWI prosecution and the issuance of death certificates. Legislators and the Governor have received complaints about the delays.

SIGNIFICANT ISSUES

A series of appellate cases, reflecting extensive litigation in the district, Bernalillo Metropolitan and magistrate courts, have addressed the admissibility of BAC test results depending on the time frame between an accused defendant's driving and the giving of the test. The most recent of these cases is *State v. Day* which reversed the defendant's DWI conviction despite a BAC of .08 from a test given 66 minutes after driving on the ground that the State failed to present expert testimony to relate the .08 BAC to the driving. The appellate court found this result was dictated by the current state of our DWI legislation, and invited legislative action by stating that the appellate court had previously suggested the need for legislation on two occasions and courts will be aided by an effective BAC law. HB 478 appears in part intended to provide such a law.

The statute as written appears to address the difficult scientific issues discussed in *Day*. Arguments addressing whether a driver's BAC was rising or falling at the time of the test are eliminated by a strict liability offense for having a BAC of .08 within three hours of driving as long as no alcohol was consumed after the driving.

The recent appellate court decision in the *Day* case now requires that the prosecutors in a DWI case must present an expert witness to "back estimate" what the defendant's blood alcohol was at the actual time of the traffic stop. This is a problem for two reasons. First, the Scientific Laboratory Division (SLD) of the DOH provides the expert witness for these cases, has they only have six expert witnesses to cover the approximately 18,000 DWI prosecutions occurring each year in New Mexico. In 2006, SLD received approximately 900 subpoenas for these six individuals to handle, which was beyond their ability to handle. As a result, many DWI cases had to do without an expert. In light of the recent appellate decision, this jeopardizes the prosecution of DWI cases throughout New Mexico.

Secondly, the back estimation of blood alcohol levels is difficult and requires detailed knowledge of the composition and timing of the defendant's drinking and eating prior to the arrest. Because providing this information to the prosecutor and expert can be viewed as self-incrimination, defendants are not required to provide this information, which prevents the expert witness from back estimating the alcohol level at the time of the traffic stop. This interferes with prosecution of the case.

Twice in the past three years, the New Mexico courts have asked that the New Mexico Legislature address this issue in the law. This bill will do so and will eliminate the need for expert witnesses from SLD in approximately 90% of the alcohol DWI prosecutions in the state.

Approximately 14 other states, as well as Canada, have adopted "windows" of time for the chemical test with windows up to 4 hours after the traffic stop.

Finally, the three-hour “window” of HB 478 mirrors the three-hour window already present in the New Mexico’s Boating While Intoxicated” law, passed by the New Mexico Legislature in 2003, eliminating inconsistencies between the two laws.

The existing DWI law states that it is unlawful for a person who is under the influence of any drug to a degree that renders him/her incapable of safely driving a vehicle within this state. The list of specified controlled substances for which HB478 makes it illegal to drive while under their influence, provides an exception to the unlawful act, by excluding such specified drugs that are obtained as authorized by the controlled substances act. Thus, a driver under the influence of these drugs, who obtained them legally, will no longer be violating the DWI law.

DOT notes that the Traffic Safety Bureau is statutorily responsible for reducing motor vehicle crashes, injuries, and deaths. If this issue is not resolved, it could create issues for the adjudication of DWI cases. This could ultimately affect crashes, injuries, and deaths as a result of driving while impaired.

In addition, the DOT provides funding to the SLD for training as well as funding to the Albuquerque Police Department for the Statewide Drug Recognition Expert program. It is difficult to identify a *per se* limit for controlled substances. It appears this bill will not allow any amount of a controlled substance while driving. This could solve the problem of the difficulty of identifying a *per se* limit for controlled substances while driving.

ADMINISTRATIVE IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The long term impact of this bill will be to allow existing FTEs at SLD to complete their required workload of drug testing within acceptable times to meet the needs of law enforcement agencies and the Office of the Medical Investigator. In recent years, the growing demand for expert witness testimony in DWI cases has diverted manpower from performing lab analyses and cause delays in results which have adversely affected DWI prosecution and the issuance of death certificates. Legislators and the Governor have received complaints about the delays.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The following bills largely duplicate, but in part conflict with HB 478: HB 403, HB 420: SB 440, and SB 443. None of those bills add controlled substances, cocaine or methamphetamine to Section 66-8-102.

DW/csd